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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
SOUTHERN CALIFORNIA,
Plaintiff,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,
UNITED STATES DEPARTMENT
OF HOMELAND SECURITY,
Defendants.

Case No. 2:22-CV-04760-SB-AFM

**DECLARATION OF LABONI HOQ
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT ON
THE PLEADINGS**

Hearing Date: August 8, 2023
Hearing Time: 11:00 a.m.
Courtroom: *Via Zoom*
Honorable Shashi H. Kewalramani
United States Magistrate Judge

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1 I, Laboni A. Hoq declare as follows:

2 1. I am counsel for Plaintiff ACLU of Southern California in the above-
3 captioned matter. I submit this declaration in support of Plaintiff's Opposition to
4 the Defendants' Motion for Judgment on the Pleadings. I have personal
5 knowledge of the facts set forth below, and if called as a witness, I could and
6 would competently testify thereto.

7 2. On April 29, 2022, Plaintiff submitted a Freedom of Information Act
8 ("FOIA") Request to Defendants Department of Homeland Security ("DHS"), the
9 DHS Office of Inspector General ("OIG"), and Immigration and Customs
10 Enforcement ("ICE"). Attached hereto as Exhibit A is a true and correct copy of
11 that FOIA Request.

12 3. On February 1, 2023, I participated with my co-counsel in a meet and
13 confer video conference with Defendants' counsel Joseph Tursi. At that conference
14 Plaintiff's counsel asked Defendants ICE and OIG to identify the search terms and
15 locations they used to locate records response to the FOIA Request. Defendants
16 responded by email that day with the information Plaintiff requested. Attached
17 hereto as Exhibit B is a true and correct copy of Defendants' February 1, 2023
18 email.

19 4. On February 14, 2023, I sent Defendants' counsel a letter which,
20 among other things, responded to Defendants' February 1, 2023 email, and asked
21 that ICE conduct an adequate search for Parts 4-9 of the FOIA Request ("Parts 4-
22 9"). Attached hereto as Exhibit C is a true and correct copy of Plaintiff's February
23 14, 2023 letter.

24 5. On February 24, 2023, Defendants' counsel Mr. Tursi responded to
25 Plaintiff's February 14, 2023 letter, but failed to respond to Plaintiff's inquiry
26 therein regarding the inadequacies of ICE's search for Parts 4-9. Attached hereto as
27 Exhibit D is a true and correct copy of Defendants' February 24, 2023 letter.

28 6. On March 1, 2023, I sent Defendants' counsel a letter responding to

1 Defendants' February 24, 2023 letter, again asking ICE to address its search
2 inadequacies regarding Parts 4-9. Attached hereto as Exhibit E is a true and
3 correct copy of Plaintiff's March 2, 2023 letter.

4 7. On March 24, 2023, my co-counsel and I participated in a meet and
5 confer video conference with Defendants' counsel Mr. Tursi on a number of issues
6 regarding the adequacy of Defendants' searches and productions to date. At that
7 conference Plaintiff's counsel followed up with Mr. Tursi about Plaintiff's
8 February 14 and March 1, 2023 correspondence regarding ICE's failure to search
9 for Parts 4-9. Mr. Tursi responded that he would follow up with ICE on the matter.

10 8. On March 29, 2023, Defendants' counsel Mr. Tursi sent me a letter
11 following up on our discussion at the March 24, 2023 meet and confer video
12 conference. Defendants took the position that that Parts 4-9 were too "vague" and
13 "overbroad" to warrant a response, but invited Plaintiff to provide ICE with search
14 terms and other search parameters to allow ICE to search for them. Attached hereto
15 as Exhibit F is a true and correct copy of Defendants' March 29, 2023 letter.

16 9. On April 14, 2023, I sent Defendants' counsel a letter responding to
17 Defendants' March 29, 2023 correspondence, demonstrating that Parts 4-9 were
18 sufficiently reasonably described and not too "vague" and "overbroad." Plaintiff
19 also provided ICE with search terms and locations to search for Parts 4-9, as
20 Defendants invited it to do in its March 29, 2023 letter. Attached hereto as Exhibit
21 G is a true and correct copy of Plaintiff's April 14, 2023 letter.

22 10. On May 12, 2023, my co-counsel and I participated in another meet
23 and confer video conference with Defendants' counsel Jason Axe, in which
24 Plaintiff's counsel raised various deficiencies with Defendants' FOIA searches,
25 including ICE's failure to respond to Plaintiff's proposed search terms and
26 locations for Parts 4-9. In the conference, Mr. Axe agreed to follow up with ICE
27 about the status of any additional searches it would agree to conduct for Parts 4-9,
28 including whether it would agree to the search parameters set forth in Plaintiff's

1 April 14, 2023 letter.

2 11. On May 16, 2023 Defendants' counsel Mr. Axe sent me an email
3 regarding the status of ICE's searches for Parts 4-9, including ICE's response to
4 the search terms and locations Plaintiff proposed in its April 14, 2023 letter.
5 Among other things, ICE acknowledged "the issue regarding the delay by ICE in
6 responding to your request for search terms," and provided an alternative set of
7 search terms and locations. Attached hereto as Exhibit H is a true and correct copy
8 of Defendants' May 16, 2023 email.

9 12. On May 18, 2023, my co-counsel and I participated in another meet
10 and confer video conference with Defendants' counsel Jason Axe regarding the
11 deficiencies with Defendants' proposed search terms and locations as to Parts 4-9.
12 As memorialized in an email of the same day, among other things, Mr. Axe stated,
13 "ICE is interested in Plaintiff's opinion as to additional terms and locations if
14 Plaintiff believes the proposed terms would not yield any documents responsive to
15 the request. Please send me proposed terms and locations that I can share with ICE
16 for their review." Attached hereto as Exhibit I is a true and correct copy of
17 Defendants' May 18, 2023 email.

18 13. On May 19, 2023, Defendants' counsel Mr. Axe sent me another
19 email to update on the status of Defendants' additional searches for and production
20 of records response to the FOIA Request. Among other things, Mr. Axe again
21 committed to follow up with ICE about the status of additional searches for Parts
22 4-9. Attached hereto as Exhibit J is a true and correct copy of Defendants' May 19,
23 2023 email.

24 14. On May 19, 2023, I sent Defendants' counsel a letter responding to
25 Defendants' emails of May 18 and 19. Attached hereto as Exhibit K is a true and
26 correct copy of Plaintiff's May 19, 2023 letter.

27 15. On May 25, 2023, Defendants' counsel Mr. Axe sent me another
28 email regarding Defendants' additional searches for records response to the FOIA

1 Request, including as to Parts 4-9. Among other things, Mr. Axe represented that
2 that ICE could potentially use Relativity software to narrow the universe of
3 responsive records, and also thread emails to avoid producing duplicative records.
4 Defendants also asked Plaintiff to propose additional search terms to facilitate the
5 use of the Relativity software. Attached hereto as Exhibit L is a true and correct
6 copy of Defendants' May 25, 2023 email.

7 16. On June 1 2023, I sent Defendants' counsel a letter responding to
8 Defendants' May 25, 2023 email. Among other things, the letter indicated that
9 Plaintiff intended to seek a Status Conference with the Court to address the delays
10 in Defendants' search for and production of responsive records. The letter also
11 provided Defendants revised search terms and locations to conduct additional
12 searches for records responsive to Request Nos. 4-9. Attached hereto as Exhibit M
13 is a true and correct copy of Plaintiff's June 1, 2023 letter.

14 17. On June 6, 2023, Defendants' counsel Jason Axe sent me an email in
15 response to Plaintiff's June 1, 2023 letter. Mr. Axe stated in the email that "[m]y
16 agency contacts are reviewing it, and we will get back to you with a detailed
17 response." He also represented that Defendants did not believe a Status
18 Conference was necessary at that time because "ICE has not **refused** to conduct
19 any searches." (Emphasis in original). Attached hereto as Exhibit N is a true and
20 correct copy of Defendants' June 1, 2023 email.

21 18. On June 9, 2023, Defendants' counsel Jason Axe sent me another
22 email in response to Plaintiffs' June 1, 2023 letter. Among other things, he
23 proposed alternative search terms and raised issues regarding Plaintiff's proposed
24 search locations at to Parts 4-9. Attached hereto as Exhibit O is a true and correct
25 copy of Defendants' June 9, 2023 email.

26 19. On June 9, 2023, I sent an email to the Court's Chambers to seek a
27 Status Conference to address Defendants' delay in searching for and producing
28 records, including as to Parts 4-9. I copied Defendants' counsel Jason Axe on that

1 email. Mr. Axe responded with an email to Chambers objecting to Plaintiff's
2 request for a Status Conference as "unnecessary," because "Defendants here have
3 worked, and are continuing to work, with Plaintiff to reach an agreement as to
4 search terms that can be utilized to resolve Plaintiff's issues." Attached hereto as
5 Exhibit P is a true and correct copy of Plaintiffs' June 9, 2023 email to the Court's
6 Chambers, and Defendants' response email.

7 20. On June 10, 2023, almost immediately after sending its response to
8 the Court's chambers regarding Defendants' opposition to a Status Conference,
9 Defendants' counsel Mr. Axe emailed me to request a time to engage in a Local
10 Rule 7-3 meet and confer discussion regarding Defendant's anticipated Rule 12(c)
11 motion. Mr. Axe explained that the motion would "challenge the requests
12 themselves," and seek to obtain a ruling from the Court as to "whether the
13 requests, as they were presented to Defendants, are too vague and overbroad to
14 reasonably describe the records sought." Attached hereto as Exhibit Q is a true and
15 correct copy of Mr. Axe's June 10, 2023 email.

16 21. On June 12, 2023, I sent a letter to Defendants' counsel responding to
17 Defendants' June 9, 2023 email in which ICE proposed alternative search terms
18 and restrictions on search locations. Among other things, in the letter Plaintiff's
19 proposed refined search terms and locations for ICE's search for Parts 4-9.
20 Attached hereto as Exhibit R is a true and correct copy of Plaintiff's June 12, 2023
21 letter.

22 22. On June 21, 2023, my co-counsel and I participated in a Local Rule 7-
23 3 video conference with Defense counsel Mr. Axe and Mr. Tursi to discuss their
24 anticipated Rule 12(c) motion. At that conference Mr. Tursi represented that they
25 would be moving to establish that only Parts 4-9 were "vague" and "overbroad,"
26 but not Parts 1-3.

27 23. On June 22, 2023, Defendants' counsel Mr. Tursi sent me a letter
28 responding to Plaintiff's June 12, 2023 letter. Among other things, he responded to

1 Plaintiff's proposed search terms and locations. Attached hereto as Exhibit S is a
2 true and correct copy of Mr. Tursi's June 22, 2023 letter.

3 24. On June 23, 2023, I sent Defendants' counsel an email regarding
4 Defendant's anticipated Rule 12(c) motion, and Plaintiff's intention to file extrinsic
5 evidence under Rule 12(d) in opposition to the Motion. Attached hereto as Exhibit
6 T is a true and correct copy of Plaintiff's June 23, 2023 email.

7 25. On June 26, 2023 I sent a letter to Defendants' counsel responding to
8 their June 22, 2023 letter regarding ICE's proposals for search terms and locations
9 regarding Parts 4-9. Attached hereto as Exhibit U is a true and correct copy of
10 Plaintiffs' June 26, 2023 letter.

11 26. On June 30, 2023, the Parties submitted a Joint Status Report to the
12 Court in advance of the July 5, 2023 Court Status Conference. Attached hereto as
13 Exhibit V is a true and correct copy of that Joint Status Report.

14 27. On July 5, 2023, my co-counsel and I participated in a Court Status
15 Conference, in which the Parties discussed Defendants' forthcoming Rule 12(c)
16 motion. At that Conference Defendants represented, contrary to their position at
17 the Parties' Rule 7-3 conference, that their motion would challenge not only Parts
18 4-9, but also Parts 1-3.

19 28. On July 11, 2023, Defendants' counsel Mr. Tursi sent me a letter in
20 response to Plaintiffs' June 26, 2023 letter, in which Defendants responded to
21 Plaintiffs' proposed search terms and locations. Attached hereto as Exhibit W is a
22 true and correct copy of Mr. Tursi's July 11, 2023 letter.

23 29. On July 12, 2023 I sent a letter to Defendants' counsel responding to
24 their July 11, 2023 letter regarding ICE's proposals for search terms and locations
25 regarding Parts 4-9. Attached hereto as Exhibit X is a true and correct copy of
26 Plaintiff's July 12, 2023 letter.

27 30. On July 13, 2023, my co-counsel and I participated in a further Court
28 Status Conference on behalf of Plaintiff. At the Status Conference, Defendants'

1 counsel Mr. Axe represented, among other things, that ICE had commenced a
2 search in response to Part 4 of the FOIA Request using Plaintiff's proposed search
3 terms and locations.

4 31. As of this date, Plaintiff has received no documents responsive to
5 Parts 4-9 of its FOIA request from Defendants.

6
7 I declare under penalty of perjury under the laws of the United States of
8 America that the foregoing is true and correct.

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10 Executed on July 25, 2023, at Oaxaca, Mexico.

11 /s/ Laboni Hoq
12 Laboni A. Hoq
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